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No. 398

In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, PETITIONER,

v.

STATE OF ALABAMA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON QUESTIONS TO BE ARGUED ORALLY

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

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MEMORANDUM FOR THE UNITED STATES IN RESPONSE TO MOTION TO RETAX COSTS

The general rule as to costs in government cases is stated in Rule 57(5) of the Revised Rules of this Court: "No costs shall be allowed in this court either for or against the United States or an officer or agency thereof, except where specially authorized by statute and directed by the court." The Civil Rights Act of 1957 provides (42 U.S.C. 1971(c)) that "In any proceeding hereunder the United States shall be liable for costs the same as a private person." The statute does not, however, alter the general rule denying allowance of costs *for* the United States.

In this case the only costs incurred by the Government were for printing the record, in the amount of $618.26. Following established practice, the Clerk did

not charge the Government fees under Rule 52 for docketing the case, preparing the record for the printer, etc. We believe that this was correct and that 42 U.S.C. 1971(c) does not call for any alteration of the Clerk's practice in this respect. See 28 U.S.C. 1911.

Similarly, as to the item of $618.26 expended by the Government for printing the record, 42 U.S.C. 1971(c) does not require that civil rights cases be treated differently from other classes of litigation in which the Government is the successful petitioner in this Court. In this respect, also, we do not believe that the general rule denying costs to the United States has been or should be changed.

Accordingly, respondents' motion to retax costs is based upon the mistaken apprehension that, unless this Court orders otherwise, costs will be taxed to them. The motion should therefore be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JUNE 1960.